Lesson 6- 6:
Labor Relations

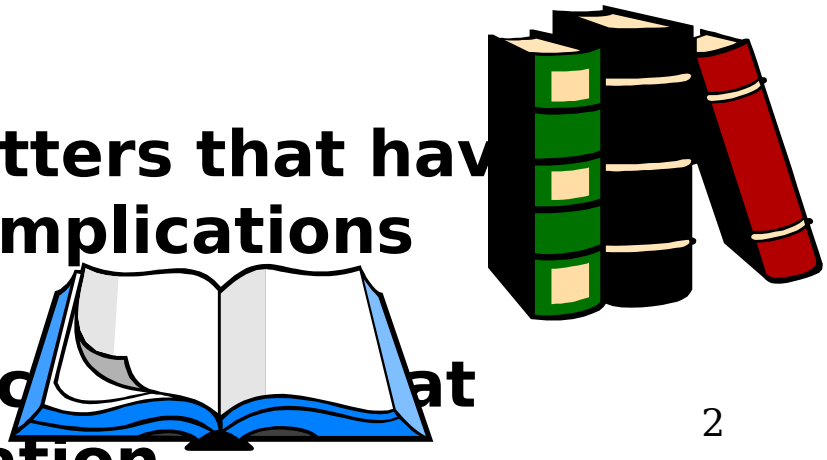
Learning Objectives

After completion of this lesson, participants will be able to:

- **Identify the rights and responsibilities of management, unions and employees under the LR statute**

- **Identify workplace matters that hav collective bargaining implications**

- **Identify workplace disc at require union coordination**



NSPS and Labor Relations

- At this time, operating under title 5 legacy rules – no different from GS

- The National Defense Authorization Act (NDAA) for Fiscal Year 2008 eliminated the NSPS regulations dealing with Labor-Management Relations

► NDAA for FY08 does include changes to labor relations

Legal Framework

- Federal Service Labor-Management Relations Statute - 5 USC 71

- Case Law - Federal Labor Relations Authority and Courts

Resources

- Supervisor's Guide on Labor Management Relations

(http://www.cpms.osd.mil/faslerd/faslerd_index.aspx - and click on Supervisor's Guide under Products and Services)

- CPAC Labor Relations Officer

What is a Bargaining Unit?

- A group of employees with common interests who are represented by a labor union in their dealings with Agency management

Excluded from the Bargaining Unit

- Most Federal employees are covered by the Labor Relations Statute.
- Excluded:

  --Supervisors

  --Management Officials

  --Confidential employees

  --Employees engaged in:
  - Personnel Work (non-clerical)
  - Work directly affecting national security
  - Administering the Federal Labor Relations Statute
  - Investigators directly affecting Agency internal security

Employee Rights

➔ Form, join or assist a labor organization or refrain from doing so without fear of penalty or reprisal.

➔ Act as a Union representative (Shop Steward, Local President, National Representative, etc).

Union Rights

- Represent all employees in the unit.
- Negotiate with the Agency.
- Be present at certain discussions.

Union Responsibilities

- Represent interests of all bargaining unit members, regardless of union membership.

- Negotiate with management in “good faith”.

Official Time

- Contract negotiations
- Representational duties
- Representing employees on grievances
- Federal Labor Relations Authority business

Management Rights

- To make basic management decisions
  - Mission, budget, organizations, security, emergencies
- To take personnel actions
  - Hire, direct, layoff, and retain employees
  - Remove, reduce in grade or pay, take disciplinary actions
  - Assign work, contract out, promote

(5 USC 7106(a))

Workplace Changes

Workplace changes that trigger management's obligation

to bargain:

- Working conditions
- Personnel policies and practices
- Affecting bargaining unit employees
- Except policies...
  - *Provided for by statute*
  - *Relating to classification*
  - *Relating to political activities*

Workplace Changes (cont)

- Must notify Union – before implementation
- Communicate what changes are intended and when they would become effective
- If there is no response, implement on the specified date
- If the Union asks to negotiate, normally bargain to completion before affecting the proposed change

Past Practice

- Pertains to condition of employment (e.g., CDs at employee workstations)
- Unwritten
- Consistently practiced over extended period of time
- Known about and accepted by both parties

➽ *Note: Change in practice triggers bargaining obligation*

Workplace Changes

- Do not:
  - Assume that there is no obligation to notify the Union because you are exercising a management right.
  - Notify the Union at the last minute, without giving a reasonable amount of time to consider the change.
  - Implement before reaching agreement
  - Make changes without notification in hopes that the Union won't notice.

Formal Discussion

- One or more management official and one or more employee or representative; and
- Concerns a grievance or any personnel policy or practice or other general condition of employment -- not individual concerns:
  - Union must be invited
  - Union selects rep
  - Union allowed to comment during meeting
  - Cannot disrupt meeting
- Not normal shop talk

Formal Discussion (cont'd)

- DISCUSSION - Can be one-way
- FORMAL
  - First-level supervisor or higher level management
  - Location of meeting
  - Length of meeting
  - How meeting was called (spontaneously or scheduled in advance)
  - Written formal agenda
  - Mandatory attendance
  - Manner conducted (attendance & comments noted)

Investigative Discussions

("WEINGARTEN" RIGHT)

- Not like Miranda right
  - Check the labor agreement
- Union can participate in discussion
  - Cannot answer for employee
- Not applicable to performance counseling or issuance of notice of discipline

Investigative Discussions

"WEINGARTEN" RIGHT (cont'd)

- Criteria:

  --Employee reasonably believes discipline could result (not based on supervisor's intent); and

  --Employee requests representation.

Investigative Discussions

(“WEINGARTEN” RIGHT cont’d)

➢ If the employee requests a representative, supervisor may:

• Simply end the meeting and not call in a union rep;

• Temporarily stop the meeting long enough to obtain union representation.

• Offer the employee the alternative to continue w/o union representation or forgo having a meeting to make his/her points.

• Remove the employee’s “reasonable belief” by stating that the employee will not be disciplined.

EXERCISE TIME

Read each situation and decide if it is (a) a formal discussion; (b) a Weingarten examination; (c) neither; or (d) both. Be prepared to explain your answer.

1. A first line supervisor holds an impromptu meeting of bargaining unit employees to discuss shop safety procedures.

2. During a staff meeting where no union representative is present, a unit employee asks a supervisor how the new procedure for assigning overtime will be implemented. The supervisor explains the new procedure.

3. A supervisor arranges a meeting with a unit employee to counsel her on her performance. She requests union representation.

4. While investigating the cause of an accident in the laboratory, a supervisory chemist meets with individual unit members who were present. One requests union representation, two others do not.

5. A supervisor meets with a unit employee to find out why he is late for the third time in two weeks. Midway through the meeting, the employee requests union representation.

Unfair Labor Practices

Management

- Interfere with employee rights
- Encourage or discourage union membership
- Sponsor, control, or assist a union
- Discriminate against employees for participation in proceedings covered by the LR Statute

Unfair Labor Practices

Management

- Failure to negotiate in good faith
  - Unilateral change in Condition of Employment
  - Contract breach (repudiation)
  - Failure to negotiate Impact & Implementation
  - Refusal to furnish information
  - Bypassing the union

Unfair Labor Practice

Management

- Fail to cooperate in Federal Service Impasses Panel (FSIP) proceedings
- Enforce any regulation in conflict with a collective bargaining agreement if the agreement predates the regulation
- Fail to comply with any provision of the Labor Relations Statute

Unfair Labor Practices

Union

- Interfere with employees' rights
- Cause an agency to discriminate against employees
- Act against union members to impede performance or productivity
- Discriminate against employees because of race, sex, religion, etc.

Unfair Labor Practices

Union

- Fail to negotiate in good faith
- Fail to cooperate in Federal Service Impasses Panel (FSIP) proceedings
- Call or participate in a strike or fail to prevent or stop a strike
- Fail to comply with any provision of the Labor Relations Statute

Arbitration

- Any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration:
  - May be invoked by management or the union (not by the employee)
  - Binding on both parties

- Few procedural rules
- Decisions (awards) are not precedential

Arbitration (cont)

- Arbitrator may award compensatory damages
- Exceptions to award may be filed within 30 days
- The Federal Labor Relations Authority may modify an award
- Costs for arbitration based on Collective Bargaining Agreement

3rd Parties in Negotiation Disputes

- Federal Labor Relations Authority
  --Resolves negotiability disputes

- Federal Mediation & Conciliation Service
  --Mediates negotiation impasses

- Federal Service Impasses Panel
  --Resolves negotiation impasses

Summary

- Provide examples of workplace changes that have collective bargaining implications
- Identify two workplace discussions or situations that require union notification